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VXN GROUP LLC; STRIKE 3 HOLDINGS, LLC;
GENERAL MEDIA SYSTEMS, LLC; and
MIKE MILLER

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

MACKENZIE ANNE THOMA, a.k.a.
KENZIE ANNE, an individual and on
behalf of all others similarly situated,

Plaintiff,

v.

VXN GROUP LLC, a Delaware
limited liability company; STRIKE 3
HOLDINGS, LLC, a Delaware limited
liability company; GENERAL MEDIA
SYSTEMS, LLC, a Delaware limited
liability company; MIKE MILLER, an
individual; and DOES 1 to 100,
inclusive,

Defendants.

Case No. **2:23-cv-04901 WLH (AGRx)**

**DECLARATION OF BRAD S. KANE
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S
MOTION TO REMAND**

Date: August 25, 2023
Time: 1:00 pm or later
Courtroom: 9B

*[Filed concurrently with Defendants'
Opposition to Plaintiff's Motion to
Remand and Supplemental Declarations
of Taylor Brock and Belen Burditte]*

[Removed on June 21, 2023, from
Los Angeles Superior Court,
Case No. 23STCV08761]

**DECLARATION OF BRAD S. KANE IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFF'S MOTION TO REMAND**

1 I, Brad S. Kane, hereby declare as follows:

2 1. I am an attorney licensed to practice law in the State of California
3 since 1990, the State of Alaska since 1991 and Washington State since 2003. I am
4 the owner of the Kane Law Firm (“KLF”), and counsel for Defendants VXN Group
5 LLC (“VXN”), Strike 3 Holdings, LLC (“Strike 3”), General Media Systems, LLC
6 (“GMS”), and Mike Miller (“Miller”) (collectively, “Defendants”). I am
7 personally familiar with, and, if called upon, could and would testify to the facts
8 contained herein from my personal knowledge.

9 2. Attached as **Exhibit 1** is a true and correct copy of the Bibiyan Law
10 Firm’s Private Attorney General Act (“PAGA”) Complaint on behalf of Mackenzie
11 Anne Thoma, a.k.a. Kenzie Anne (“Plaintiff”), filed in Los Angeles Superior Court
12 (“LASC”) on July 11, 2023.

13 3. Attached as **Exhibit 2** is a true and correct copy of BLF’s PAGA
14 Complaint in *Alfaro v. Banter by Piercing Pagoda, et al.* filed in the Superior Court
15 of California, County of Orange, on February 25, 2022.

16 4. Attached hereto as **Exhibit 3** is a true and correct copy of BLF’s
17 PAGA Complaint in *Gamarro v. Walgreen Pharmacy Services Midwest, LLC, et*
18 *al.* filed in LASC on January 11, 2023.

19 5. Attached hereto as **Exhibit 4** is a true and correct copy of BLF’s
20 PAGA Complaint in *Rodriguez v. Raising Cane’s USA, LLC, et al.* Complaint filed
21 in LASC on February 7, 2023.

22 6. Attached hereto as **Exhibit 5** is a true and correct copy of my July 19,
23 2023 email correspondence with Plaintiff’s counsel Sarah Cohen of BLF. In this
24 correspondence, I offered to stipulate to a consolidation of Plaintiff’s concurrent
25 actions in both state and federal court regarding the same facts and circumstances
26 to promote judicial efficiency and save time and money for both Plaintiff and
27 Defendants. BLF refused the offer.

1 I declare under penalty of perjury that the foregoing is true and
2 correct. Executed on July 28, 2023 at Los Angeles, California.

3
4 /s/ Brad S. Kane

5 Brad S. Kane
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Los Angeles, CA 90035

Exhibit 1

Electronically FILED by
Superior Court of California,
County of Los Angeles
7/11/2023 12:25 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By E. Galicia, Deputy Clerk

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Attorneys for Plaintiff, MACKENZIE ANNE THOMA,

as an aggrieved employee, and on behalf of all other

aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MACKENZIE ANNE THOMA, a.k.a.
KENZIE ANNE, as an aggrieved employee,
and on behalf of all other aggrieved employees
under the Labor Code Private Attorneys'
General Act of 2004,

Plaintiff,

v.

VXN GROUP LLC, a Delaware limited
liability company; STRIKE 3 HOLDINGS,
LLC, a Delaware limited liability company;
GENERAL MEDIA SYSTEMS, LLC, a
Delaware limited liability company; MIKE
MILLER, an individual; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: **23STCV16142**

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 226.8, 558, 1174.5,
1197.1 and 2699**

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$25,000.00]

1 Plaintiff MACKENZIE ANNE THOMA, as an aggrieved employee, and on behalf of all
2 other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, alleges
3 as follows:

4 **JURISDICTION AND VENUE**

5 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
6 Act of 2004, codified at Labor Code section 2698, *et seq.* ("PAGA"), against VXN GROUP LLC,
7 ("VXN GROUP"), STRIKE 3 HOLDINGS, LLC ("STRIKE 3"), GENERAL MEDIA SYSTEMS,
8 LLC ("GENERAL MEDIA") and VXN GROUP's Executive Director, MIKE MILLER
9 (collectively, "Vixen Media Group"). (collectively, and with DOES 1 through 100, as further
10 defined below, "Defendants"), as a proxy of the Labor and Workforce Development Agency of the
11 State of California ("LWDA"), on behalf of Plaintiff and all other current and former non-exempt
12 employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as
13 it pertains to the alleged claims for failure to comply with Labor Code section 6409.6, Labor Code
14 section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 226.8, Labor
15 Code section 246, *et seq.*, Labor Code section 432, Labor Code section 1198.5, Labor Code section
16 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees
17 of Defendants working within the Civil Penalty Period (collectively, "Aggrieved Employees").

18 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
19 of Civil Procedure section 410.10.

20 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
21 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
22 causes of action complained of herein arose; the county in which the employment relationship
23 began; the county in which performance of the employment contract, or part of it, between Plaintiff
24 and Defendants was due to be performed; the county in which the employment contract, or part of
25 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,
26 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff
27 and Aggrieved Employees in Los Angeles County, and because Defendants employ numerous
28 Aggrieved Employees in Los Angeles County.

1 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
2 Defendants during the applicable statutory period and suffered one or more of the Labor Code
3 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
4 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
5 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
6 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
7 employees of Defendants during the Civil Penalty Period.

8 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
9 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
10 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
11 PAGA allegations described herein is not required.

12 6. During the period beginning one (1) year preceding the provision of notice to the
13 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
14 Defendants violated, *inter alia*, Labor Code sections 98.6, 201, 202, 203, 204, 210, 226, 226.3,
15 226.7, 226.8, 227.3, 246, 2802, 432, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198.5, 2699,
16 2802, 2810.5, 6409.2 among others.

17 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
18 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
19 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
20 specified in Labor Code section 2699.3.

21 8. On April 17, 2023, Plaintiff provided written notice pursuant to Labor Code section
22 2699.3 online and by certified mail, with return receipt requested, of Defendants’ violation of
23 various, including the herein-described, provisions of the Labor Code, to the LWDA, as well as by
24 certified mail, with return receipt requested to Defendants, and each of them.

25 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
26 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
27 calendar days of the April 17, 2023 postmarked date of the herein-described notice sent by Plaintiff
28 to the LWDA and Defendants.

PAGA REPRESENTATIVE ALLEGATIONS

10. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, willful misclassification. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, to the detriment of Plaintiff and other Aggrieved Employees.

11. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control. As such, Plaintiff is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 221, 223, 1197, 1182.12, and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Plaintiff and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

12. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted, timely, and complete meal period for days on which the employee worked in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation, by interrupting meal periods; not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal

1 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
2 employees worked, as required by California wage and hour laws.

3 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
5 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
6 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
7 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
8 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
9 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
10 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

11 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
12 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
13 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
14 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
15 hourly rates in effect during the pay period and the corresponding number of hours worked at each
16 hourly rate by the employee; the legal name of the employer and/or the name and address of the
17 legal entity securing the employer's services if the employer is a farm labor contractor; and other
18 such information as required by Labor Code section 226, subdivision (a).

19 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
21 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
22 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
23 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
24 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other
25 Aggrieved Employees.

26 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
28 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime

1 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
2 Code sections 201, 202, and 203.

3 17. At all relevant times herein, Defendants had and have a policy or practice of failing
4 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
5 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
6 and applicable Wage Orders.

7 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
8 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
9 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred, in direct consequence
10 of the discharge of their duties, or of their obedience to the directions of Defendants, as required by
11 Labor Code section 2802, and other statutory and common law offenses. As a result, Employer are
12 liable to reimburse Employee and other aggrieved employees for these costs incurred in furtherance
13 of work duties. In addition, Defendants would be liable for civil penalties pursuant to Labor Code
14 sections 558 and 2699.

15 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
16 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
17 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
18 Employees with the rates of pay and overtime rates of pay applicable to their employment;
19 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
20 name, address, and telephone number of the workers' compensation insurance carrier; information
21 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
22 under Labor Code section 2810.5.

23 20. At all relevant times mentioned herein, Defendants have had a policy or practice of
24 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
25 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
26 any calendar month shall be paid for between the 16th and 26th day of the month during which the
27 labor was performed, and labor performed between the 16th and the last day, inclusive of any
28 calendar month, shall be paid for between the 1st and 10th day of the following month."

21. At all relevant times mentioned herein, Defendants had and have a policy or practice of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge and experience they obtained at Defendants for purposes of competing with Defendants, including, without limitation, preventing Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else works at Defendants and under what circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed and believes that this policy and/or practice violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k).

22. Defendants had and have a policy or practice of preventing Plaintiff and/or other Aggrieved Employees from disclosing violations of state and federal law, either within Defendants to their managers or outside to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5.

23. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor Code sections 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

PARTIES

A. Plaintiff

24. Plaintiff Ms. Thoma, a resident of the State of California, is a decorated and well-known adult film actress and model who performs under the stage name “Kenzie Anne”. She has been named “Pet of the Year” by Penthouse magazine and shortly before the filing of this Complaint appeared on the cover of Hustler magazine.

25. Before beginning her acting career, she modeled and participated in photo shoots for various clothing brands and adult magazines, such as Wet Seal, Free People, Carbon38, Playboy Plus, and Eats Channel. In November of 2020, she signed a contract with Defendants, known widely as “Vixen Media Group”, with her entry into the adult film industry occurring on or around April

1 30, 2021. Between November 2020 through approximately September of 2022, Ms. Thoma
2 performed in Defendants' movies and modeled at their direction.

3 **B. Defendants**

4 26. Plaintiff is informed and believes that defendants VXN GROUP, STRIKE 3, and
5 GENERAL MEDIA are limited liability companies organized and existing under the laws of the
6 State of Delaware and doing business in the County of Los Angeles, State of California.

7 27. VIXEN MEDIA GROUP is the creator of adult motion pictures and photographs
8 distributed for commercial sale through various distribution outlets and platforms. It was founded
9 in 2014 by French entrepreneur and director Greg Lansky along with partners Steven Matthysen
10 and Mike Miller with the goal of creating higher-quality videos that would be considered more
11 "artistic" than the normal realm of adult video content. While Greg Lansky sold his stake in VIXEN
12 MEDIA GROUP in January of 2020, it still owns and operates at least seven online adult film sites,
13 including Vixen, Tushy, Blacked, Blacked Raw, Tushy Raw, Deeper and Slayed.

14 28. VIXEN MEDIA GROUP has won many major awards in the adult-film industry, including
15 an XBIZ Award as recently in 2022 for Studio of the Year.

16 29. Plaintiff is informed and believes and based thereon alleges that defendant MILLER is,
17 and at all times relevant hereto was, an individual residing in California, as well as a founder,
18 principal, and the Executive Producer of VXN GROUP, and DOES 1 through 50, as further defined
19 below. Plaintiff is further informed and believes and based thereon alleges that MILLER violated,
20 or caused to be violated, the above-referenced and below-referenced Labor Code provisions in
21 violation of Labor Code section 558.1.

22 30. The true names and capacities, whether individual, corporate, associate, or otherwise, of
23 defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who
24 therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
25 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
26 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
27 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
28 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is

1 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
2 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
3 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
4 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
5 include VXN GROUP, STRIKE 3, GENERAL MEDIA, MILLER, and any of their parent,
6 subsidiary, or affiliated companies within the State of California, as well as DOES 1 through 100
7 identified herein.

8 **JOINT LIABILITY ALLEGATIONS**

9 31. Plaintiff is informed and believes, and based thereon alleges, that at all times
10 mentioned herein, each of the defendants was the agent, principal, employee, employer,
11 representative, joint venture or co-conspirator of each of the other defendants, either actually or
12 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
13 employment, joint venture, and conspiracy.

14 32. All of the acts and conduct described herein of each and every corporate defendant
15 was duly authorized, ordered, and directed by the respective and collective defendant corporate
16 employers, and the officers and management-level employees of said corporate employers. In
17 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
18 their said employees, agents, and representatives, and each of them; and upon completion of the
19 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
20 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
21 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
22 aforementioned corporate employees, agents and representatives.

23 33. Plaintiff is informed and believes, and based thereon alleges, that despite the
24 formation of the purported corporate existence of VXN GROUP, STRIKE 3, GENERAL MEDIA,
25 MILLER, and DOES 1 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them,
26 are one and the same with DOES 51 through 100 (“Individual Defendants”), and each of them, due
27 to, but not limited to, the following reasons:

28 a. The Alter Ego Defendants are completely dominated and controlled by the

1 Individual Defendants who personally committed the wrongful and illegal acts and violated the laws
2 as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego
3 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or
4 inequitable purpose;

5 b. The Individual Defendants derive actual and significant monetary benefits by
6 and through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego Defendants as
7 the funding source for the Individual Defendants' own personal expenditures;

8 c. Plaintiff is informed and believes, and thereon alleges, that the Individual
9 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
10 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
11 accomplishing some other wrongful or inequitable purpose;

12 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
13 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
14 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
15 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
16 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
17 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
18 herein were, the alter egos of the Individual Defendants;

19 e. The recognition of the separate existence of the Individual Defendants from
20 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
21 insulate themselves from liability to Plaintiff for violations to the Civil Code, Government Code,
22 and other statutory violations. The corporate existence of these defendants should thus be
23 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
24 and injustice to Plaintiff herein;

25 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
26 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
27 disregarded.

28 34. As a result of the aforementioned facts, Plaintiff is informed and believes, and based

1 thereon alleges that Defendants, and each of them, are joint employers.

2 **FIRST CAUSE OF ACTION**

3 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

4 35. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
5 preceding paragraphs as though fully set forth hereat.

6 **Civil Penalties Under Labor Code § 210**

7 36. At all relevant times herein, Labor Code section 204, requires and required that:
8 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
9 between the 16th and 26th day of the month during which the labor was performed, and labor
10 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
11 between the 1st and 10th day of the following month.”

12 37. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
13 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
14 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
15 204, 204b, 204.1, 205, 205.5, shall be subject to a civil penalty as follows: (1) For any initial
16 violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each
17 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each
18 failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

19 38. At all relevant times herein, Defendants have had a consistent policy or practice of
20 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
21 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
22 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
23 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
24 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
25 for each subsequent violation in connection with each payment that was made in violation of Labor
26 Code section 204.

27 **Civil Penalties Under Labor Code § 226.3**

28 39. Defendants had and have a policy or practice of failing to comply with Labor Code

1 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
2 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
3 wages earned; the name and address of each employer with whom they have been placed to work;
4 all applicable hourly rates in effect during the pay period and the corresponding number of hours
5 worked at each hourly rate; the legal name of the employer and/or the name and address of the legal
6 entity securing the employer's services if the employer is a farm labor contractor; and other such
7 information as required by Labor Code section 226, subdivision (a).

8 40. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a)
9 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
10 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
11 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
12 deduction statement or fails to keep the records required in subdivision (a) of Section 226."

13 41. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
14 this section are in addition to any other penalty provided by law."

15 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
16 and have a policy or practice of failing to furnish non-exempt employees, including, without
17 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
18 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
19 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
20 name of the employer and/or the name and address of the legal entity securing the employer's
21 services if the employer is a farm labor contractor; and other such information as required by Labor
22 Code section 226, subdivision (a).

23 43. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
24 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
25 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
26 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
27 period for each subsequent violation.

28 ///

Civil Penalties Under Labor Code § 226.8

44. Plaintiff re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

45. Plaintiff is informed and believes that Defendants had and have a policy or practice of failing to comply with Labor Code section 226.8 as Defendants willfully misclassified Plaintiff and other aggrieved employees as independent contractors.

46. Labor Code section 226.8(b) states: “If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

47. Labor Code section 226.8(c) states: “If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.”

48. Thus, pursuant to Labor Code section 226.8, Plaintiff and other Aggrieved Employees she seeks to represent are entitled to recover civil penalties for Defendants’ violation of Labor Code section 226.8, subdivision (a) in the amount specified in Labor Code sections 226.8, subdivisions (b) and (c).

Violation of Labor Code § 558

49. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil penalty as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each pay period for which the employee was underpaid in addition to an amount sufficient

1 to recover underpaid wages;

2 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
3 employee for each pay period for which the employee was underpaid in addition to
4 an amount sufficient to recover underpaid wages;

5 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

6 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants, and
7 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
8 causing Plaintiff and other Aggrieved Employees not to: be paid with the rates of pay and overtime
9 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
10 regular payday designated by employer, the name of the employer, including any “doing business
11 as” names used, the name, address, and telephone number of the workers’ compensation insurance
12 carrier, information regarding paid sick leave, and other pertinent information.

13 51. As a direct and proximate result of the herein-described Labor Code violations,
14 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover
15 civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty dollars
16 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars
17 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

18 Violation of Labor Code § 1174.5

19 52. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
20 every person employing labor in California to “[a]llow any member of the commission or the
21 employees of the Division of Labor Standards Enforcement free access to the place of business or
22 employment of the person to secure any information or make any investigation that they are
23 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
24 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
25 or papers of the person.”

26 53. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
27 every person employing labor in California to “[k]eep a record showing the names and addresses of
28 all employees employed and the ages of all minors.”

54. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

55. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

56. Plaintiff is informed and believes, and based thereon alleges, that Defendants have willfully failed to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174.

57. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five hundred dollars (\$500) per violation per Aggrieved Employee.

Violation of Labor Code § 1197.1

58. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,

1 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
2 Section 203 as follows:

3 (1) For any initial violation that is intentionally committed, one hundred dollars
4 (\$100) for each underpaid employee for each pay period for which the
5 employee is underpaid. This amount shall be in addition to an amount
6 sufficient to recover underpaid wages, liquidated damages pursuant to Section
7 1194.2, and any applicable penalties imposed pursuant to Section 203.

8 (2) For each subsequent violation for the same specific offense, two hundred fifty
9 dollars (\$250) for each underpaid employee for each pay period for which the
10 employee is underpaid regardless of whether the initial violation is
11 intentionally committed. This amount shall be in addition to an amount
12 sufficient to recover underpaid wages, liquidated damages pursuant to Section
13 1194.2, and any applicable penalties imposed pursuant to Section 203.

14 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
15 Section 203, recovered pursuant to this section shall be paid to the affected
16 employee.”

17 59. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
18 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without
19 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ minimum wages for all
20 hours worked or otherwise under Defendants’ control due to, without limitation, routinely failing to
21 accurately track and/or pay for all hours actually worked; detrimental rounding or manipulation of
22 time entries; paying straight pay instead of overtime or otherwise failing to pay overtime hours at
23 the proper overtime rate of pay; engaging, suffering, or permitting employees to work off the clock,
24 entitling Plaintiff and other aggrieved Employees to actual and liquidated damages.

25 60. As a direct and proximate result of the herein-described Labor Code violations,
26 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
27 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
28 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and

1 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
2 subsequent violation.

3 Civil Penalties Under Labor Code § 2699

4 61. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
5 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
6 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
7 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
8 action brought by an aggrieved employee on behalf of himself or herself and other current or former
9 employees pursuant to the procedures specified in Labor Code section 2699.3.

10 62. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
11 Code except those for which a civil penalty is specifically provided, the established civil penalty for
12 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
13 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
14 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
15 employee per pay period for each subsequent violation.

16 63. Plaintiff is informed and believes, and based thereon alleges that Defendants, and
17 each of them, violated the Labor Code sections described herein, including, without limitation, for
18 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
19 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
20 name of the employer, including “doing business as” names used, the name, address, and telephone
21 number of the workers’ compensation insurance carrier, information regarding paid sick leave, and
22 other pertinent information required to be disclosed by Defendants under Labor Code section
23 2810.5, failing to provide Plaintiff and other Aggrieved Employees with the amount of paid sick
24 leave required to be provided pursuant to California and local laws.

25 64. Moreover, Plaintiff and other Aggrieved Employees within the State of California
26 whom he seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in
27 connection with their herein-described claims for civil penalties.

28 ///

REQUEST FOR JURY TRIAL

65. Plaintiff hereby requests a trial by jury.

PRAYER

WHEREFORE, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for judgment against Defendants as follows:

- A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 226.8, 558, 1174.5, 1197.1, and 2699;
- B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- C. Pre-judgment and post-judgment interest;
- D. For costs of suit incurred herein; and
- E. Such other and further relief as the Court deems just and proper.

Dated: July 11, 2023

BIBIYAN LAW GROUP, P.C.

BY: /s/ Sarah H. Cohen

DAVID D. BIBIYAN

JEFFREY D. KLEIN

SARAH H. COHEN

Attorneys for Plaintiff MACKENZIE ANNE THOMA, as an aggrieved employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004,

Exhibit 2

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Attorneys for Plaintiff, SILVIA ALFARO, as an aggrieved employee, and on behalf of all other aggrieved employees

Assigned For All Purposes

Judge William Claster

CX-104

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

SILVIA ALFARO, as an aggrieved employee,
and on behalf of all other aggrieved employees
under the Labor Code Private Attorneys'
General Act of 2004,

Plaintiff,

v.

BANTER BY PIERCING PAGODA, an Ohio
corporation; PIERCING PAGODA, an Ohio
corporation; ZALE DELAWARE, INC., a
Delaware corporation; AMANDA HORN, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 30-2022-01247176-CU-OE-CXC

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5, 1197.1
and 2699**

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$25,000.00]

COMES NOW Plaintiff SYLVIA ALFARO ("Plaintiff"), as aggrieved employees, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys' General Act of 2004, and alleges as follows:

JURISDICTION AND VENUE

1
2 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
3 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against BANTER BY
4 PIERCING PAGODA, an Ohio corporation, and any of its respective subsidiaries or affiliated
5 companies within the State of California (“BANTER”), PIERCING PAGODA, an Ohio
6 corporation, and any of its respective subsidiaries or affiliated companies within the State of
7 California (“PAGODA”), ZALE DELAWARE, INC., a Delaware corporation and any of its
8 respective subsidiaries or affiliated companies within the State of California (“ZALES”), and
9 AMANDA HORN (“HORN” and, collectively with BANTER, PAGODA, ZALES, and DOES 1
10 through 100, as further defined below, “Defendants”), as a proxy of the Labor and Workforce
11 Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other
12 current and former non-exempt employees of Defendants working within the Civil Penalty Period,
13 as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor
14 Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3,
15 Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing
16 and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty
17 Period (collectively, “Aggrieved Employees”).

18 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
19 of Civil Procedure section 410.10.

20 3. Venue is proper in Orange County, California pursuant to Code of Civil Procedure
21 sections 392, *et seq.* because, among other things, Orange County is where the causes of action
22 complained of herein arose; the county in which the employment relationship began; the county in
23 which performance of the employment contract, or part of it, between Plaintiff, or some of them,
24 and Defendants was due to be performed; the county in which the employment contract, or part of
25 it, between Plaintiff, or some of them, and Defendants was actually performed; and the county in
26 which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct
27 effect on Plaintiff and Class Members in Orange County, and because Defendants employ numerous
28 Class Members in Orange County.

1 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
2 Defendants during the applicable statutory period and suffered one or more of the Labor Code
3 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
4 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
5 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
6 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
7 employees of Defendants during the Civil Penalty Period.

8 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
9 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
10 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
11 PAGA allegations described herein is not required.

12 6. During the period beginning one (1) year preceding the provision of notice to the
13 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
14 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
15 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
16 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

17 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
18 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
19 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
20 specified in Labor Code section 2699.3.

21 8. On or around December 21, 2021, Plaintiff provided written notice pursuant to Labor
22 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
23 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
24 as well as by certified mail, with return receipt requested to Defendants, and each of them.

25 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
26 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
27 calendar days of the December 21, 2021 postmarked date of the herein-described notice sent by
28 Plaintiff to the LWDA and Defendants.

PAGA REPRESENTATIVE ALLEGATIONS

10. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including answering calls from dispatch and others), to clock out for meal periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay, to the detriment of Plaintiff and other Aggrieved Employees.

11. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including answering calls from dispatch and others), to clock out for meal periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours

1 than actually worked; failing to pay reporting time pay; paid time off and vacation time owed; and
2 failing to pay split shift premiums, to the detriment of Plaintiff and other Aggrieved Employees.

3 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,
5 timely, and complete meal period for days on which the employee worked in excess of five (5) and
6 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
7 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
8 not providing timely meal periods; failing to provide first and second meal periods; providing short
9 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
10 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
11 periods; and/or auto-deducting meal periods that could not be auto-deducted by law or during which
12 employees worked, as required by California wage and hour laws.

13 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
14 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
15 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
16 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
17 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
18 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
19 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
20 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

21 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
22 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
23 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
24 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
25 hourly rates in effect during the pay period and the corresponding number of hours worked at each
26 hourly rate by the employee; the legal name of the employer and/or the name and address of the legal
27 entity securing the employer's services if the employer is a farm labor contractor; and other such
28 information as required by Labor Code section 226, subdivision (a).

1 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
3 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
4 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
5 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
6 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
7 Aggrieved Employees.

8 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
9 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
10 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
11 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
12 Code sections 201, 202, and 203.

13 17. At all relevant times herein, Defendants had and have a policy or practice of failing
14 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
15 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
16 and applicable Wage Orders.

17 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
18 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
19 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
20 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
21 separately laundering mandatory uniforms, for the purchase of tools and safety equipment (including
22 work boots to handle oil), for the purchase and maintenance of cellular phones and cellular phone
23 plans, in direct consequence of the discharge of their duties, or of their obedience to the directions
24 of Defendants, as required by Labor Code 2802.

25 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
26 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
27 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
28 Employees with the rates of pay and overtime rates of pay applicable to their employment;

1 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
2 name, address, and telephone number of the workers' compensation insurance carrier; information
3 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
4 under Labor Code section 2810.5.

5 20. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
6 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
7 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
8 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
9 all other Aggrieved Employees.

10 21. At all relevant times mentioned herein, Defendants have had a policy or practice of
11 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
12 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
13 any calendar month shall be paid for between the 16th and 26th day of the month during which the
14 labor was performed, and labor performed between the 16th and the last day, inclusive of any
15 calendar month, shall be paid for between the 1st and 10th day of the following month."

16 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
17 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
18 and experience they obtained at Defendants for purposes of competing with Defendants, including,
19 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
20 a prospective employer, and from disclosing who else works at Defendants and under what
21 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
22 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
23 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
24 Code sections 232, 232.5, and 1197.5, subdivision (k).

25 23. Defendants had and have a policy or practice of preventing Plaintiff and/or other
26 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
27 to their managers or outside to private attorneys or government officials, among others, in violation
28 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section

1 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
2 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
3 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
4 of Labor Code section 232 and 232.5.

5 24. Defendants had and have a policy or practice of preventing Plaintiff and/or other
6 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
7 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
8 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
9 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
10 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
11 economic liberty.

12 25. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
13 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
14 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
15 Employees pursuant to PAGA.

16 **PARTIES**

17 **A. Plaintiff**

18 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
19 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
20 exempt employee, with duties that included, but were not limited to, p customer service, payroll,
21 training, and managing the storefront. Plaintiff is informed and believes that Plaintiff worked for
22 Defendants from approximately November of 2018 through approximately August of 2021.

23 **B. Defendants**

24 27. Plaintiff is informed and believes and based thereon alleges that Defendant BANTER
25 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
26 the laws of the State of Ohio and doing business in the County of Orange, State of California.

27 28. Plaintiff is informed and believes and based thereon allege that Defendant PAGODA
28 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of

1 the laws of the State of Ohio and doing business in the County of Orange, State of California.

2 29. Plaintiff is informed and believes and based thereon allege that Defendant ZALES
3 is, and at all times relevant hereto was, a corporation organized and existing under and by virtue of
4 the laws of the State of Delaware and doing business in the County of Orange, State of California.

5 30. Plaintiff is informed and believes and based thereon alleges that Defendant HORN
6 is, and at all times relevant hereto was, an individual residing in California, as well as Regional
7 Manager for BANTER, PAGODA, ZALES, and DOES 1 through 100, as further defined below.

8 31. The true names and capacities, whether individual, corporate, associate, or otherwise,
9 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
10 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
11 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
12 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
13 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
14 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
15 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
16 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
17 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
18 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
19 include BANTER, PAGODA, ZALES, and any of their parent, subsidiary, or affiliated companies
20 within the State of California, HORN, as well as DOES 1 through 100 identified herein.

21 **JOINT LIABILITY ALLEGATIONS**

22 32. Plaintiff is informed and believes, and based thereon alleges, that at all times
23 mentioned herein, each of the defendants was the agent, principal, employee, employer,
24 representative, joint venture or co-conspirator of each of the other defendants, either actually or
25 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
26 employment, joint venture, and conspiracy.

27 33. All of the acts and conduct described herein of each and every corporate defendant
28 was duly authorized, ordered, and directed by the respective and collective defendant corporate

1 employers, and the officers and management-level employees of said corporate employers. In
2 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
3 their said employees, agents, and representatives, and each of them; and upon completion of the
4 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
5 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
6 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
7 aforementioned corporate employees, agents and representatives.

8 34. Plaintiff is informed and believes, and based thereon allege, that there exists such a
9 unity of interest and ownership between Defendants, and each of them, that their individuality and
10 separateness have ceased to exist.

11 35. Plaintiff is informed and believes, and based thereon allege that despite the formation
12 of the purported corporate existence of BANTER, PAGODA, ZALES, and DOES 1 through 50,
13 inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same with HORN
14 and DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to,
15 the following reasons:

- 16 a. The Alter Ego Defendants are completely dominated and controlled by the
17 Individual Defendants who personally committed the wrongful and illegal acts
18 and violated the laws as set forth in this Complaint, and who has hidden and
19 currently hide behind the Alter Ego Defendants to perpetrate frauds,
20 circumvent statutes, or accomplish some other wrongful or inequitable
21 purpose;
- 22 b. The Individual Defendants derive actual and significant monetary benefits by
23 and through the Alter Ego Defendants’ unlawful conduct, and by using the
24 Alter Ego Defendants as the funding source for the Individual Defendants’
25 own personal expenditures;
- 26 c. Plaintiff is informed and believes and thereon alleges that the Individual
27 Defendants and the Alter Ego Defendants, while really one and the same, were
28 segregated to appear as though separate and distinct for purposes of

22 36. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
23 thereon alleges that Defendants, and each of them, are joint employers.

26 37. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
27 and incorporates each by reference as though fully set forth hereat.

Civil Penalties Under Labor Code § 210

38. At all relevant times herein, Labor Code section 204, requires and required that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

39. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

40. At all relevant times herein, Defendants have had a consistent policy or practice of failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation in connection with each payment that was made in violation of Labor Code section 204.

Civil Penalties Under Labor Code § 226.3

41. Defendants had and have a policy or practice of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages earned; the name and address of each employer with whom they have been placed to work; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate; the legal name of the employer and/or the name and address of the legal

1 entity securing the employer's services if the employer is a farm labor contractor; and other such
2 information as required by Labor Code section 226, subdivision (a).

3 42. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a)
4 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
5 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
6 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
7 deduction statement or fails to keep the records required in subdivision (a) of Section 226."

8 43. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
9 this section are in addition to any other penalty provided by law."

10 44. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
11 and have a policy or practice of failing to furnish non-exempt employees, including, without
12 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
13 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
14 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
15 name of the employer and/or the name and address of the legal entity securing the employer's services
16 if the employer is a farm labor contractor; and other such information as required by Labor Code
17 section 226, subdivision (a).

18 45. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
19 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
20 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
21 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
22 period for each subsequent violation.

23 Violation of Labor Code § 558

24 46. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
25 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
26 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
27 penalty as follows:

28 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each

1 pay period for which the employee was underpaid in addition to an amount sufficient
2 to recover underpaid wages;

3 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
4 employee for each pay period for which the employee was underpaid in addition to
5 an amount sufficient to recover underpaid wages;

6 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

7 47. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
8 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
9 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime
10 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
11 regular payday designated by Employer, the name of the employer, including any “doing business
12 as” names used, the name, address and telephone number of the workers’ compensation insurance
13 carrier, information regarding paid sick leave, and other pertinent information.

14 48. As a direct and proximate result of the herein-described Labor Code violations,
15 pursuant to Labor Code section 558, Plaintiffs and other Aggrieved Employees are entitled to
16 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount fifty
17 dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred
18 dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

19 Violation of Labor Code § 1174.5

20 49. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
21 every person employing labor in California to “[a]llow any member of the commission or the
22 employees of the Division of Labor Standards Enforcement free access to the place of business or
23 employment of the person to secure any information or make any investigation that they are
24 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
25 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
26 or papers of the person.”

27 50. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
28 every person employing labor in California to “[k]eep a record showing the names and addresses of

1 all employees employed and the ages of all minors.”

2 51. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
3 every person employing labor in California to “[k]eep, at a central location in the state or at the
4 plants or establishments at which employees are employed, payroll records showing the hours
5 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
6 piece rate paid to, employees employed at the respective plants or establishments. These records
7 shall be kept in accordance with rules established for this purpose by the commission, but in any
8 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
9 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
10 earned.”

11 52. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
12 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
13 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
14 member of the commission or employees of the division to inspect records pursuant to subdivision
15 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

16 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
17 willfully failed keep adequate or accurate time records including wage statements and similar
18 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
19 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
20 under Labor Code section 1174.

21 54. As a direct and proximate result of the herein-described Labor Code violations,
22 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
23 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
24 hundred dollars (\$500) per violation per Aggrieved Employee.

25 Violation of Labor Code § 1197.1

26 55. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
27 person acting either individually or as an officer, agent, or employee of another person, who pays
28 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or

1 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
2 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
3 Section 203 as follows:

4 (1) For any initial violation that is intentionally committed, one hundred dollars
5 (\$100) for each underpaid employee for each pay period for which the
6 employee is underpaid. This amount shall be in addition to an amount
7 sufficient to recover underpaid wages, liquidated damages pursuant to Section
8 1194.2, and any applicable penalties imposed pursuant to Section 203.

9 (2) For each subsequent violation for the same specific offense, two hundred fifty
10 dollars (\$250) for each underpaid employee for each pay period for which the
11 employee is underpaid regardless of whether the initial violation is
12 intentionally committed. This amount shall be in addition to an amount
13 sufficient to recover underpaid wages, liquidated damages pursuant to Section
14 1194.2, and any applicable penalties imposed pursuant to Section 203.

15 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
16 Section 203, recovered pursuant to this section shall be paid to the affected
17 employee.”

18 56. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
19 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
20 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ to pay
21 minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual
22 and liquidated damages.

23 57. As a direct and proximate result of the herein-described Labor Code violations,
24 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
25 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
26 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
27 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
28 subsequent violation.

Civil Penalties Under Labor Code § 2699

58. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

59. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the established civil penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

60. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, violated the Labor Code sections described herein, including, without limitation, for the failure to: pay the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California and local laws.

61. Moreover, Plaintiff and other Aggrieved Employees within the State of California whom he seeks to represent are entitled to an award of reasonable attorneys’ fees and costs in connection with their herein-described claims for civil penalties.

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DEMAND FOR JURY TRIAL

62. Plaintiff hereby requests a trial by jury.

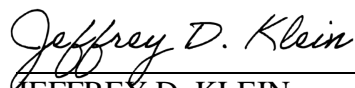
PRAYER

WHEREFORE, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for judgment against Defendants as follows:

- A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- C. Pre-judgment and post-judgment interest;
- D. For costs of suit incurred herein; and
- E. Such other and further relief as the Court deems just and proper.

Dated: February 25, 2022

BIBIYAN LAW GROUP, P.C.

BY: 
JEFFREY D. KLEIN

DAVID D. BIBIYAN

Attorneys for Plaintiff SYLVIA ALFARO, as
an aggrieved employee, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004

Exhibit 3

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Attorneys for Plaintiff, ANITA GAMARRO and
on behalf of himself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ANITA GAMARRO, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys’ General Act of 2004,

Plaintiff,

v.

WALGREEN PHARMACY SERVICES
MIDWEST, LLC, an Illinois limited liability
company; WALGREEN CO., an Illinois
corporation; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: **23STCV00615**
REPRESENTATIVE ACTION
**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS’
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5, 1197.1
and 2699**
DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$25,000.00]

COMES NOW plaintiff ANITA GAMARRO (“Plaintiff”), as aggrieved employees, and on
behalf of all other aggrieved employees under the Labor Code Private Attorneys’ General Act of
2004, and alleges as follows:

JURISDICTION AND VENUE

1
2 1. This is a representative action, pursuant to the Labor Code Private Attorneys General
3 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against WALGREEN
4 PHARMACY SERVICES MIDWEST, LLC., an Illinois limited liability company, and any of its
5 respective subsidiaries or affiliated companies within the State of California (“WALGREEN
6 SERVICES”), and WALGREEN CO., an Illinois corporation, and any of its respective subsidiaries
7 or affiliated companies within the State of California (“WALGREEN,” and together with
8 “WALGREEN SERVICES” and DOES 1 through 100, as further defined below, “Defendants”), as
9 a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on
10 behalf of Plaintiff and all other current and former non-exempt employees of Defendants working
11 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
12 for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section
13 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints
14 on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants
15 working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

16 2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
17 of Civil Procedure section 410.10.

18 3. Venue is proper in Los Angeles County, California pursuant to Code of Civil
19 Procedure sections 392, *et seq.* because, among other things, Los Angeles County is where the
20 causes of action complained of herein arose; the county in which the employment relationship
21 began; the county in which performance of the employment contract, or part of it, between Plaintiffs,
22 or some of them, and Defendants was due to be performed; the county in which the employment
23 contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in
24 which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct
25 effect on Plaintiffs and Aggrieved Employees in Los Angeles County, and because Defendants
26 employ numerous Aggrieved Employees in Los Angeles County.

27 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
28 Defendants during the applicable statutory period and suffered one or more of the Labor Code

1 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
2 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
3 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
4 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
5 employees of Defendants during the Civil Penalty Period.

6 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
7 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
8 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
9 PAGA allegations described herein is not required.

10 6. During the period beginning one (1) year preceding the provision of notice to the
11 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
12 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
13 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
14 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

15 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
16 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
17 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
18 specified in Labor Code section 2699.3.

19 8. On or around August 10, 2022 Plaintiff provided written notice pursuant to Labor
20 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
21 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
22 as well as by certified mail, with return receipt requested to Defendants, and each of them.

23 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
24 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
25 calendar days of the August 10, 2022 postmarked date of the herein-described notice sent by
26 Plaintiff to the LWDA and Defendants.

27 / / /

28 / / /

PAGA REPRESENTATIVE ALLEGATIONS

10. At all relevant times mentioned herein, Defendants had and have a policy or practice of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of California in violation of California state wage and hour laws as a result of, without limitation, Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including answering calls from dispatch and others), to clock out for meal periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay, and engaging, suffering, or permitting employees to go through temperature checks off the to the detriment of Plaintiff and other Aggrieved Employees.

11. At all relevant times mentioned herein, Defendants had and have a practice or policy of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours worked or otherwise under Defendants' control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including answering calls from dispatch and others), to clock out for meal periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental

1 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
2 than actually worked; failing to pay reporting time pay; failing to pay split shift premiums; and
3 engaging, suffering, or permitting employees to go through temperature checks off the clock to the
4 detriment of Plaintiff and other Aggrieved Employees.

5 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
6 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,
7 timely, and complete meal period for days on which the employee worked in excess of five (5) and
8 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
9 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
10 not providing timely meal periods; failing to provide first and second meal periods; providing short
11 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
12 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
13 periods; or auto-deducting meal periods that could not be auto-deducted by law or during which
14 employees worked, as required by California wage and hour laws

15 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
16 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
17 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
18 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
19 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
20 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
21 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
22 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

23 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
24 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
25 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
26 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
27 hourly rates in effect during the pay period and the corresponding number of hours worked at each
28 hourly rate by the employee; the legal name of the employer and/or the name and address of the legal

1 entity securing the employer's services if the employer is a farm labor contractor; and other such
2 information as required by Labor Code section 226, subdivision (a).

3 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
5 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
6 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
7 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
8 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
9 Aggrieved Employees.

10 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
11 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
12 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
13 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
14 Code sections 201, 202, and 203.

15 17. At all relevant times mentioned herein, Defendants have had a policy or practice of
16 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
17 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
18 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
19 separately laundering mandatory uniforms, for the purchase of tools and safety equipment (including
20 work boots to handle oil), for the purchase and maintenance of cellular phones and cellular phone
21 plans, in direct consequence of the discharge of their duties, or of their obedience to the directions
22 of Defendants, as required by Labor Code 2802.

23 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
24 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
25 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
26 Employees with the rates of pay and overtime rates of pay applicable to their employment;
27 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
28 name, address, and telephone number of the workers' compensation insurance carrier; information

1 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
2 under Labor Code section 2810.5.

3 19. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
4 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
5 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
6 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
7 all other Aggrieved Employees.

8 20. At all relevant times mentioned herein, Defendants have had a policy or practice of
9 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
10 Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of
11 any calendar month shall be paid for between the 16th and 26th day of the month during which the
12 labor was performed, and labor performed between the 16th and the last day, inclusive of any
13 calendar month, shall be paid for between the 1st and 10th day of the following month.”

14 21. At all relevant times mentioned herein, Defendants had and have a policy or practice
15 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
16 and experience they obtained at Defendants for purposes of competing with Defendants, including,
17 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
18 a prospective employer, and from disclosing who else works at Defendants and under what
19 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
20 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
21 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
22 Code sections 232, 232.5, and 1197.5, subdivision (k).

23 22. Defendants had and have a policy or practice of preventing Plaintiff and/or other
24 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
25 to their managers or outside to private attorneys or government officials, among others, in violation
26 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
27 1102.5. In addition, Plaintiff is informed and believes that Defendants’ herein-described policies
28 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information

1 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
2 of Labor Code section 232 and 232.5.

3 23. Defendants had and have a policy or practice of preventing Plaintiff and/or other
4 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
5 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
6 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
7 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
8 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
9 economic liberty.

10 24. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor
11 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate
12 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved
13 Employees pursuant to PAGA.

14 **PARTIES**

15 **A. Plaintiff**

16 25. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
17 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
18 exempt employee, with duties that included, but were not limited to, pharmacy related tasks such as
19 filling prescriptions and assisting with vaccinations. Plaintiff is informed and believes that Plaintiff
20 worked for Defendants from approximately May of 2020 through approximately November of 2021.

21 **B. Defendants**

22 26. Plaintiff is informed and believes and based thereon alleges that defendant
23 WALGREEN CO is, and at all times relevant hereto was, a limited liability company organized and
24 existing under and by virtue of the laws of the Illinois and doing business in the County Los Angeles,
25 State of California.

26 27. Plaintiff is informed and believes and based thereon alleges that defendant
27 WALGREEN is, and at all times relevant hereto was, a corporation organized and existing under
28 and by virtue of the laws of the State of Illinois and doing business in the County of Los Angeles,

1 State of California.

2 28. The true names and capacities, whether individual, corporate, associate, or otherwise,
3 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
4 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
5 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
6 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
7 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
8 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
9 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
10 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
11 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
12 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
13 include WALGREEN CO, WALGREEN, and any of their parent, subsidiary, or affiliated
14 companies within the State of California, as well as DOES 1 through 100 identified herein.

15 **JOINT LIABILITY ALLEGATIONS**

16 29. Plaintiff is informed and believes, and based thereon alleges, that at all times
17 mentioned herein, each of the defendants was the agent, principal, employee, employer,
18 representative, joint venture or co-conspirator of each of the other defendants, either actually or
19 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
20 employment, joint venture, and conspiracy.

21 30. All of the acts and conduct described herein of each and every corporate defendant
22 was duly authorized, ordered, and directed by the respective and collective defendant corporate
23 employers, and the officers and management-level employees of said corporate employers. In
24 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
25 their said employees, agents, and representatives, and each of them; and upon completion of the
26 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
27 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
28 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the

1 aforementioned corporate employees, agents and representatives.

2 31. Plaintiff is informed and believes, and based thereon alleges, that despite the
3 formation of the purported corporate existence of WALGREEN CO, WALGREEN, and DOES 1
4 through 50, inclusive (the “Alter Ego Defendants”), they, and each of them, are one and the same
5 with DOES 51 through 100 (“Individual Defendants”), and each of them, due to, but not limited to,
6 the following reasons:

7 a. The Alter Ego Defendants are completely dominated and controlled by the
8 Individual Defendants who personally committed the wrongful and illegal acts and violated the laws
9 as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego
10 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or
11 inequitable purpose;

12 b. The Individual Defendants derive actual and significant monetary benefits by
13 and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants as
14 the funding source for the Individual Defendants’ own personal expenditures;

15 c. Plaintiff is informed and believes, and thereon alleges, that the Individual
16 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
17 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
18 accomplishing some other wrongful or inequitable purpose;

19 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
20 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
21 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
22 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
23 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of
24 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
25 herein were, the alter egos of the Individual Defendants;

26 e. The recognition of the separate existence of the Individual Defendants from
27 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
28 insulate themselves from liability to Plaintiffs for violations to the Civil Code, Government Code,

1 and other statutory violations. The corporate existence of these defendants should thus be
2 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
3 and injustice to Plaintiff herein;

4 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
5 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
6 disregarded.

7 32. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
8 thereon alleges that Defendants, and each of them, are joint employers.

9 **FIRST CAUSE OF ACTION**

10 **(Civil Penalties under the Private Attorneys General Act (2004) – Against All Defendants)**

11 33. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
12 and incorporates each by reference as though fully set forth hereat.

13 **Civil Penalties Under Labor Code § 210**

14 34. At all relevant times herein, Labor Code section 204, requires and required that:
15 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
16 between the 16th and 26th day of the month during which the labor was performed, and labor
17 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
18 between the 1st and 10th day of the following month.”

19 35. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
20 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
21 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
22 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
23 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For
24 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
25 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

26 36. At all relevant times herein, Defendants have had a consistent policy or practice of
27 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
28 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other

1 Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of Labor
2 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
3 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
4 for each subsequent violation in connection with each payment that was made in violation of Labor
5 Code section 204.

6 Civil Penalties Under Labor Code § 226.3

7 37. Defendants had and have a policy or practice of failing to comply with Labor Code
8 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
9 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
10 wages earned; the name and address of each employer with whom they have been placed to work;
11 all applicable hourly rates in effect during the pay period and the corresponding number of hours
12 worked at each hourly rate; the legal name of the employer; and other such information as required
13 by Labor Code section 226, subdivision (a).

14 38. Labor Code section 226.3 states that "[a]ny employer who violates subdivision (a)
15 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
16 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
17 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
18 deduction statement or fails to keep the records required in subdivision (a) of Section 226."

19 39. Labor Code section 226.3 further provides that "[t]he civil penalties provided for in
20 this section are in addition to any other penalty provided by law."

21 40. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
22 and have a policy or practice of failing to furnish non-exempt employees, including, without
23 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total
24 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
25 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
26 name of the employer and; and other such information as required by Labor Code section 226,
27 subdivision (a).

28 / / /

1 41. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
2 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
3 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
4 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
5 period for each subsequent violation.

6 Violation of Labor Code § 558

7 42. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
8 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
9 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
10 penalty as follows:

11 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
12 pay period for which the employee was underpaid in addition to an amount sufficient
13 to recover underpaid wages;

14 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
15 employee for each pay period for which the employee was underpaid in addition to
16 an amount sufficient to recover underpaid wages;

17 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

18 43. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
19 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
20 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime
21 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
22 regular payday designated by Employer, the name of the employer, including any "doing business
23 as" names used, the name, address and telephone number of the workers' compensation insurance
24 carrier, information regarding paid sick leave, and other pertinent information.

25 44. As a direct and proximate result of the herein-described Labor Code violations,
26 pursuant to Labor Code section 558, Plaintiffs and other Aggrieved Employees are entitled to
27 recover civil penalties for Defendants' herein-described Labor Code violations in the amount fifty
28 dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred

1 dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

2 Violation of Labor Code § 1174.5

3 45. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required
4 every person employing labor in California to “[a]llow any member of the commission or the
5 employees of the Division of Labor Standards Enforcement free access to the place of business or
6 employment of the person to secure any information or make any investigation that they are
7 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,
8 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,
9 or papers of the person.”

10 46. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required
11 every person employing labor in California to “[k]eep a record showing the names and addresses of
12 all employees employed and the ages of all minors.”

13 47. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required
14 every person employing labor in California to “[k]eep, at a central location in the state or at the
15 plants or establishments at which employees are employed, payroll records showing the hours
16 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable
17 piece rate paid to, employees employed at the respective plants or establishments. These records
18 shall be kept in accordance with rules established for this purpose by the commission, but in any
19 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee
20 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units
21 earned.”

22 48. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully
23 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
24 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
25 member of the commission or employees of the division to inspect records pursuant to subdivision
26 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

27 / / /

28 / / /

1 49. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
2 willfully failed keep adequate or accurate time records including wage statements and similar
3 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
4 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
5 under Labor Code section 1174.

6 50. As a direct and proximate result of the herein-described Labor Code violations,
7 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
8 recover civil penalties for Defendants' herein-described Labor Code violations in the amount of five
9 hundred dollars (\$500) per violation per Aggrieved Employee.

10 Violation of Labor Code § 1197.1

11 51. Pursuant to Labor Code section 1197.1, subdivision (a): "Any employer or other
12 person acting either individually or as an officer, agent, or employee of another person, who pays
13 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
14 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
15 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
16 Section 203 as follows:

17 (1) For any initial violation that is intentionally committed, one hundred dollars
18 (\$100) for each underpaid employee for each pay period for which the
19 employee is underpaid. This amount shall be in addition to an amount
20 sufficient to recover underpaid wages, liquidated damages pursuant to Section
21 1194.2, and any applicable penalties imposed pursuant to Section 203.

22 (2) For each subsequent violation for the same specific offense, two hundred fifty
23 dollars (\$250) for each underpaid employee for each pay period for which the
24 employee is underpaid regardless of whether the initial violation is
25 intentionally committed. This amount shall be in addition to an amount
26 sufficient to recover underpaid wages, liquidated damages pursuant to Section
27 1194.2, and any applicable penalties imposed pursuant to Section 203.

28 / / /

1 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
2 Section 203, recovered pursuant to this section shall be paid to the affected
3 employee.”

4 52. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
5 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
6 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ to pay
7 minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual
8 and liquidated damages.

9 53. As a direct and proximate result of the herein-described Labor Code violations,
10 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
11 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
12 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
13 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
14 subsequent violation.

15 Violation of Labor Code section 1198

16 54. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
17 has a policy or practice of failing to provide all working employees with suitable seats when the
18 nature of the work reasonably permits the use of seats. Plaintiff is further informed and believes,
19 and based thereon alleges that Defendants have failed to place an adequate number of seats in
20 reasonable proximity to the work area and/or permitted employees to use such seats when it does
21 not interfere with the performance of their duties when employees are not engaged in the active
22 duties of their employment and the nature of their work requires standing.

23 55. California Labor Code Section 1198 makes it illegal to employ an employee under
24 conditions of labor that are prohibited by the applicable wage order. California Labor Code section
25 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . .
26 standard conditions of labor for employees. The employment of any employee . . . under conditions
27 of labor prohibited by the order is unlawful.”

28 / / /

1 56. Section 14 of the applicable Wage Order provides that: “(A) all working employees
2 shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
3 (B) When employees are not engaged in the active duties of their employment and the nature of the
4 work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity
5 to the work area and employees shall be permitted to use such seats when it does not interfere with
6 the performance of their duties.”

57. At all relevant times, Defendants have failed to provide such suitable seating to Plaintiff and Class Members, including when Plaintiff and Class Members are not engaged in the active duties of their employment. Upon information and belief, the work performed by persons in these positions includes common tasks that could be performed while seated and the location of the tasks to be performed made it feasible to do so while seated.

58. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each subsequent violation.

18 Violation of Labor Code section 6400 *et seq.*

19 59. Plaintiff is informed and believes and based thereon alleges that Defendants had and
20 have a policy or practice of failing to furnish and use safety devices and safeguards. And adopt and
21 use practices, means, methods, operations, and processes which are reasonably adequate to render
22 such employment and place of employment safe and healthful, pursuant to, including but not limited
23 to, Labor Code section 6401. Plaintiff is informed and believes and based thereon alleges that
24 Defendants had and has a policy or practice of requiring or permitting employees to go or be in any
25 employment or place of employment which is not safe and healthful, pursuant to Labor Code section
26 6402. Plaintiff is informed and believes, and based thereon alleges that Defendants had and has a
27 policy or practice of failing or neglecting to: provide and use safety devices and safeguards
28 reasonably adequate to render the employment and place of employment safe; adopt and use

1 methods and processes reasonably adequate to render the employment and place of employment
2 safe; and do every other thing reasonably necessary to protect the life, safety, and health of
3 employees, pursuant to Labor Code section 6403.

4 60. Plaintiff is informed and believes, and based thereon alleges that these failures
5 include, without limitation, failing to disinfect time clocks and other surfaces after use by Plaintiff
6 and/or other aggrieved employees; failing to provide adequate protection equipment to Plaintiff
7 and/or other aggrieved employees; and failing to provide adequate distance in working conditions
8 between Plaintiff and/or other aggrieved employees.

9 61. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
10 has a policy or practice of failing to give sufficient, adequate and proper notice to employees of the
11 Covid-19 exposure within one business day of receiving notice of potential Covid-19 workplace
12 exposure from a qualifying individual as required by Labor Code section 6409.6. Plaintiff is
13 informed and believes that numerous employees contracted COVID-19 during the relevant time
14 periods, but that Employer failed to provide notice to employees. Plaintiff is additionally informed
15 and believes that Defendants have not or did not keep adequate records of written notifications
16 required in subdivision (a) for a period of at least three years.

17 62. Specifically, Plaintiff is informed and believes, and based thereon alleges, that
18 Defendants had and have a practice or policy of failing within one business day after Defendants or
19 a representative of Defendants received a notice of potential exposure to COVID-19 to provide
20 written notice to Plaintiff and other aggrieved employees, or their exclusive representatives, who
21 were on the premises at the same worksite as a qualifying individual who was within the infectious
22 period that they may have been exposed to COVID-19. Furthermore, Plaintiff is informed and
23 believes, and based thereon alleges, that Defendants had and have a practice or policy of failing
24 within one business day after Defendants or a representative of Defendants received a notice of
25 potential exposure to COVID-19 to provide Plaintiff and other aggrieved employees who were on
26 the premises at the same worksite as the qualifying individual within the infectious period and the
27 exclusive representative, if any, with information regarding COVID-19-related benefits to which
28 the employee may be entitled under applicable federal, state, or local laws, including, but not limited

1 to, workers' compensation, and options for exposed employees, including COVID-19-related leave,
2 company sick leave, state-mandated leave, supplemental sick leave, or negotiated leave provisions,
3 as well as antiretaliation and antidiscrimination protections of the employee. Plaintiff is informed
4 and believes, and based thereon alleges, that Defendants violated, without limitation, Labor Code
5 sections 6409.6 and 6432.

6 63. Additionally, Plaintiff is informed and believes, and based thereon alleges, that
7 Defendants had and have a practice or policy of failing within one business day after Defendants or
8 a representative of Defendants received a notice of potential exposure to COVID-19 to notify
9 Defendants and other aggrieved employees who were on the premises at the same worksite as the
10 qualifying individual within the infectious period, and the employers of subcontracted employees
11 who were on the premises at the same worksite as the qualifying individual within the infectious
12 period and the exclusive representative, if any, of the cleaning and disinfection plan that the
13 employer is implementing per the guidelines of the federal Centers for Disease Control and
14 Prevention and the COVID-19 prevention program per the Cal-OSHA COVID-19 Emergency
15 Temporary Standards. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 violated, without limitation, Labor Code sections 6409.6 and 6432.

17 64. Moreover, Plaintiff is informed and believes, and based thereon alleges, that
18 Defendants had and have a practice or policy of failing to notify the local public health agency in
19 the jurisdiction of the worksite of the names, number, occupation, and worksite of employees who
20 had a laboratory-confirmed case of COVID-19, as defined by the State Department of Public Health;
21 a positive COVID-19 diagnosis from a licensed health care provider; a COVID-19-related order to
22 isolate provided by a public health official; or died due to COVID-19, in the determination of a
23 county public health department or per inclusion in the COVID-19 statistics of a county. Plaintiff is
24 informed and believes, and based thereon alleges, that Defendants violated, without limitation,
25 Labor Code sections 6409.6 and 6432.

26 65. As a direct and proximate result of the herein-described Labor Code violations,
27 pursuant to Labor Code sections 6400 *et seq*, Plaintiff and other Aggrieved Employees are entitled
28 to recover civil penalties for Defendants' herein-described Labor Code violations in the amount one

1 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
2 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
3 subsequent violation.

4 Civil Penalties Under Labor Code § 2699

5 66. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
6 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
7 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
8 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
9 action brought by an aggrieved employee on behalf of himself or herself and other current or former
10 employees pursuant to the procedures specified in Labor Code section 2699.3.

11 67. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
12 Code except those for which a civil penalty is specifically provided, the established civil penalty for
13 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
14 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
15 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
16 employee per pay period for each subsequent violation.

17 68. Plaintiff is informed and believes and based thereon alleges that Defendants, and
18 each of them, violated the Labor Code sections described herein, including, without limitation, for
19 the failure to: pay the rates of pay and overtime rates of pay applicable to their employment,
20 allowances claimed as part of the minimum wage, the regular payday designated by Defendants, the
21 name of the employer, including any “doing business as” names used, the name, address and
22 telephone number of the workers’ compensation insurance carrier, information regarding paid sick
23 leave, and other pertinent information required to be disclosed by Employer under Labor Code
24 section 2810.5, failing to provide Employee and other aggrieved employees with the amount of paid
25 sick leave, including but not limited to, COVID paid sick leave , required to be provided pursuant
26 to California and local laws.

27 / / /

28 / / /

69. Moreover, Plaintiff and other Aggrieved Employees within the State of California whom they seek to represent are entitled to an award of reasonable attorneys' fees and costs in connection with their herein-described claims for civil penalties.

REQUESTS FOR JURY TRIAL

70. Plaintiff hereby requests a trial by jury on all causes of action contained herein.

PRAYER

WHEREFORE, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for judgment against Defendants as follows:

- A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699, and 2802, and all other applicable sections listed *infra*;
- B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699, 2802, and all other applicable sections listed *infra*;
- C. Pre-judgment and post-judgment interest;
- D. For costs of suit incurred herein; and
- E. Such other and further relief as the Court deems just and proper.

Dated: January 11, 2023

BIBIYAN LAW GROUP, P.C.

BY: /s/ Alexander D. Wallin

DAVID D. BIBIYAN

JEFFREY D. KLEIN

ALEXANDER WALLIN

Attorneys for Plaintiff ANITA GAMARRO,
as an aggrieved employee, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004,

Exhibit 4

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aggrieved employee, and on behalf of all other
aggrieved employees under the Labor Code Private
Attorneys' General Act of 2004,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CAYA RODRIGUEZ, as an aggrieved
employee, and on behalf of all other aggrieved
employees under the Labor Code Private
Attorneys' General Act of 2004,

Plaintiff,

v.

RAISING CANE'S USA, L.L.C., a California
limited liability company; RAISING CANE'S
RESTAURANTS, L.L.C., a California limited
liability company; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: **23STCV02673**

REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5, 1197.1
and 2699**

DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$25,000.00]

COMES NOW plaintiff CAYA RODRIGUEZ (“Plaintiff”), as aggrieved employees, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys’ General Act of 2004, and alleges as follows:

JURISDICTION AND VENUE

1. This is a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against RAISING CANE’S USA, L.L.C., a California limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California (“RCUSA”); RAISING CANE’S RESTAURANTS, L.L.C., a California limited liability company, and any of its respective subsidiaries or affiliated companies within the State of California (“RCR” and together with “RCUSA”, and DOES 1 through 100, as further defined below, “Defendants”), as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

2. Jurisdiction exists in the Superior Court of the State of California pursuant to Code of Civil Procedure section 410.10.

3. Venue is proper in LOS ANGELES County, California pursuant to Code of Civil Procedure sections 392, *et seq.* because, among other things, LOS ANGELES County is where the causes of action complained of herein arose; the county in which the employment relationship began; the county in which performance of the employment contract, or part of it, between Plaintiffs, or some of them, and Defendants was due to be performed; the county in which the employment contract, or part of it, between Plaintiff and Defendants was actually performed; and the county in which Defendants, or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiffs and Aggrieved Employees in LOS ANGELES County, and because Defendants

1 employ numerous Aggrieved Employees in LOS ANGELES County.

2 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
3 Defendants during the applicable statutory period and suffered one or more of the Labor Code
4 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
5 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
6 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
7 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
8 employees of Defendants during the Civil Penalty Period.

9 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
10 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
11 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
12 PAGA allegations described herein is not required.

13 6. During the period beginning one (1) year preceding the provision of notice to the
14 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
15 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
16 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197,
17 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

18 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
19 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
20 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
21 specified in Labor Code section 2699.3.

22 8. On or around August 26, 2022, Plaintiff provided written notice pursuant to Labor
23 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
24 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
25 as well as by certified mail, with return receipt requested to Defendants, and each of them.

26 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
27 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
28 calendar days of the August 26, 2022, postmarked date of the herein-described notice sent by

1 Plaintiff to the LWDA and Defendants.

2 **PAGA REPRESENTATIVE ALLEGATIONS**

3 10. At all relevant times mentioned herein, Defendants had and have a policy or practice
4 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of
5 California in violation of California state wage and hour laws as a result of, without limitation,
6 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per
7 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime
8 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually
9 worked; engaging, suffering, or permitting employees to work off the clock, including, without
10 limitation, by requiring employees: to remain on-call, to suffer under Defendants' control to
11 complete pre-shift tasks before clocking in and post-shift tasks after clocking out (including
12 answering calls from dispatch and others), to clock out for meal periods and continue working, to
13 don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the
14 clock, to make phone calls or drive off the clock; failing to include all forms of remuneration,
15 including non-discretionary bonuses, incentive pay, meal allowances, and other forms of
16 remuneration into the regular rate of pay for the pay periods where overtime was worked and the
17 additional compensation was earned for the purpose of calculating the overtime rate of pay;
18 detrimental rounding of employee time entries, editing and/or manipulation of time entries to show
19 less hours than actually worked, and for paying straight pay instead of overtime pay, and engaging,
20 suffering, or permitting employees to go through temperature checks off the to the detriment of
21 Plaintiff and other Aggrieved Employees.

22 11. At all relevant times mentioned herein, Defendants had and have a practice or policy
23 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours
24 worked or otherwise under Defendants' control as a result of, without limitation, failing to
25 accurately track and/or pay for all minutes actually worked; by requiring employees: to remain on-
26 call; to suffer under Defendants' control to complete pre-shift tasks before clocking in and post-shift
27 tasks after clocking out (including answering calls from dispatch and others), to clock out for meal
28 periods and continue working, to don and doff uniforms and/or safety equipment off the clock, to

1 attend company meetings off the clock, to make phone calls or drive off the clock; detrimental
2 rounding of employee time entries, editing and/or manipulation of time entries to show less hours
3 than actually worked; failing to pay reporting time pay; failing to pay split shift premiums; and
4 engaging, suffering, or permitting employees to go through temperature checks off the clock to the
5 detriment of Plaintiff and other Aggrieved Employees.

6 12. At all relevant times mentioned herein, Defendants had and have a policy or practice
7 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,
8 timely, and complete meal period for days on which the employee worked in excess of five (5) and
9 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal
10 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;
11 not providing timely meal periods; failing to provide first and second meal periods; providing short
12 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal
13 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal
14 periods; or auto-deducting meal periods that could not be auto-deducted by law or during which
15 employees worked, as required by California wage and hour laws

16 13. At all relevant times mentioned herein, Defendants had and have a policy or practice
17 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and
18 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions
19 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest
20 periods all together; requiring that they be bundled together and/or with meal periods; interrupting
21 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not
22 providing them in a timely fashion; and not permitting employees to leave the premises; and/or
23 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

24 14. At all relevant times mentioned herein, Defendants had and have a policy or practice
25 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
26 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross
27 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable
28 hourly rates in effect during the pay period and the corresponding number of hours worked at each

1 hourly rate by the employee; the legal name of the employer and/or the name and address of the legal
2 entity securing the employer's services if the employer is a farm labor contractor; and other such
3 information as required by Labor Code section 226, subdivision (a).

4 15. At all relevant times mentioned herein, Defendants had and have a policy or practice
5 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish
6 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment
7 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
8 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to
9 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiffs and other
10 Aggrieved Employees.

11 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
12 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages
13 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime
14 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor
15 Code sections 201, 202, and 203.

16 17. At all relevant times herein, Defendants had and have a policy or practice of failing
17 to pay Plaintiff and Aggrieved Employees their paid time off and vacation time owed upon
18 separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3
19 and applicable Wage Orders.

20 18. At all relevant times mentioned herein, Defendants have had a policy or practice of
21 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without
22 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal
23 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,
24 separately laundering mandatory uniforms, for the purchase of tools and safety equipment, for the
25 purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the
26 discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor
27 Code 2802.

28

1 19. At all relevant times mentioned herein, Defendants have had a policy or practice of
2 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft
3 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
4 Employees with the rates of pay and overtime rates of pay applicable to their employment;
5 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
6 name, address, and telephone number of the workers' compensation insurance carrier; information
7 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
8 under Labor Code section 2810.5.

9 20. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
10 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
11 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not
12 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
13 all other Aggrieved Employees.

14 21. At all relevant times mentioned herein, Defendants have had a policy or practice of
15 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
16 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
17 any calendar month shall be paid for between the 16th and 26th day of the month during which the
18 labor was performed, and labor performed between the 16th and the last day, inclusive of any
19 calendar month, shall be paid for between the 1st and 10th day of the following month."

20 22. At all relevant times mentioned herein, Defendants had and have a policy or practice
21 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
22 and experience they obtained at Defendants for purposes of competing with Defendants, including,
23 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
24 a prospective employer, and from disclosing who else works at Defendants and under what
25 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
26 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
27 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
28 Code sections 232, 232.5, and 1197.5, subdivision (k).

23. Defendants had and have a policy or practice of preventing Plaintiff and/or other Aggrieved Employees from disclosing violations of state and federal law, either within Defendants to their managers or outside to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5.

24. Defendants had and have a policy or practice of preventing Plaintiff and/or other Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and economic liberty.

25. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

PARTIES

A. Plaintiff

26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-exempt employee, with duties that included, but were not limited to, operating the cash register, and running food to customers. Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately December of 2021 through approximately May of 2022.

B. Defendants

27. Plaintiff is informed and believes and based thereon alleges that defendant RCUSA

1 is, and at all times relevant hereto was, a limited liability company organized and existing under and
2 by virtue of the laws of the State of California and doing business in the County LOS ANGELES,
3 State of California.

4 28. Plaintiff is informed and believes and based thereon alleges that defendant RCR is,
5 and at all times relevant hereto was, a limited liability company organized and existing under and
6 by virtue of the laws of the State of California and doing business in the County of LOS ANGELES,
7 State of California.

8 29. The true names and capacities, whether individual, corporate, associate, or otherwise,
9 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
10 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
11 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
12 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
13 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
14 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
15 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
16 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
17 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
18 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
19 include RCUSA, RCR, and any of their parent, subsidiary, or affiliated companies within the State
20 of California, as well as DOES 1 through 100 identified herein.

21 **JOINT LIABILITY ALLEGATIONS**

22 30. Plaintiff is informed and believes, and based thereon alleges, that at all times
23 mentioned herein, each of the defendants was the agent, principal, employee, employer,
24 representative, joint venture or co-conspirator of each of the other defendants, either actually or
25 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
26 employment, joint venture, and conspiracy.

27 31. All of the acts and conduct described herein of each and every corporate defendant
28 was duly authorized, ordered, and directed by the respective and collective defendant corporate

1 employers, and the officers and management-level employees of said corporate employers. In
2 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
3 their said employees, agents, and representatives, and each of them; and upon completion of the
4 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
5 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
6 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
7 aforementioned corporate employees, agents and representatives.

8 32. Plaintiff is informed and believes, and based thereon alleges, that despite the
9 formation of the purported corporate existence of RCUSA, RCR, and DOES 1 through 50, inclusive
10 (the “Alter Ego Defendants”), they, and each of them, are one and the same with DOES 51 through
11 100 (“Individual Defendants”), and each of them, due to, but not limited to, the following reasons:

12 a. The Alter Ego Defendants are completely dominated and controlled by the
13 Individual Defendants who personally committed the wrongful and illegal acts and violated the laws
14 as set forth in this Complaint, and who have hidden and currently hide behind the Alter Ego
15 Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or
16 inequitable purpose;

17 b. The Individual Defendants derive actual and significant monetary benefits by
18 and through the Alter Ego Defendants’ unlawful conduct, and by using the Alter Ego Defendants as
19 the funding source for the Individual Defendants’ own personal expenditures;

20 c. Plaintiff is informed and believes, and thereon alleges, that the Individual
21 Defendants and the Alter Ego Defendants, while really one and the same, were segregated to appear
22 as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
23 accomplishing some other wrongful or inequitable purpose;

24 d. Plaintiff is informed and believes, and thereon alleges, that the business affairs
25 of the Individual Defendants and the Alter Ego Defendants are, and at all relevant times mentioned
26 herein were, so mixed and intermingled that the same cannot reasonably be segregated, and the same
27 are inextricable confusion. The Alter Ego Defendants are, and at all relevant times mentioned herein
28 were, used by the Individual Defendants as mere shells and conduits for the conduct of certain of

1 their, and each of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
2 herein were, the alter egos of the Individual Defendants;

3 e. The recognition of the separate existence of the Individual Defendants from
4 the Alter Ego Defendants would promote injustice insofar that it would permit these defendants to
5 insulate themselves from liability to Plaintiffs for violations to the Civil Code, Government Code,
6 and other statutory violations. The corporate existence of these defendants should thus be
7 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
8 and injustice to Plaintiff herein;

9 f. Accordingly, the Alter Ego Defendants constitute the alter ego of the
10 Individual Defendants (and vice versa), and the fiction of their separate corporate existence must be
11 disregarded.

12 33. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
13 thereon alleges that Defendants, and each of them, are joint employers.

14 **FIRST CAUSE OF ACTION**

15 **(Civil Penalties under the Private Attorneys General Act (2004) – Against All Defendants)**

16 34. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs
17 and incorporates each by reference as though fully set forth hereat.

18 **Civil Penalties Under Labor Code § 210**

19 35. At all relevant times herein, Labor Code section 204, requires and required that:
20 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
21 between the 16th and 26th day of the month during which the labor was performed, and labor
22 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
23 between the 1st and 10th day of the following month.”

24 36. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated
25 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this
26 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,
27 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any
28 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For

1 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
2 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

3 37. At all relevant times herein, Defendants have had a consistent policy or practice of
4 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
5 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
6 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
7 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
8 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
9 for each subsequent violation in connection with each payment that was made in violation of Labor
10 Code section 204.

11 Civil Penalties Under Labor Code § 226.3

12 38. Defendants had and have a policy or practice of failing to comply with Labor Code
13 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
14 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net
15 wages earned; the name and address of each employer with whom they have been placed to work;
16 all applicable hourly rates in effect during the pay period and the corresponding number of hours
17 worked at each hourly rate; the legal name of the employer; and other such information as required
18 by Labor Code section 226, subdivision (a).

19 39. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
20 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
21 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
22 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
23 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

24 40. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
25 this section are in addition to any other penalty provided by law.”

26 41. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
27 and have a policy or practice of failing to furnish non-exempt employees, including, without
28 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total

1 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the
2 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal
3 name of the employer and; and other such information as required by Labor Code section 226,
4 subdivision (a).

5 42. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
6 entitled to recover civil penalties for Defendants' violation of Labor Code section 226, subdivision
7 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
8 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
9 period for each subsequent violation.

10 Violation of Labor Code § 558

11 43. Pursuant to Labor Code section 558, subdivision (a): "Any employer or other person
12 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating
13 hours and days of work in any of the Industrial Welfare Commission" shall be subject to a civil
14 penalty as follows:

15 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
16 pay period for which the employee was underpaid in addition to an amount sufficient
17 to recover underpaid wages;

18 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
19 employee for each pay period for which the employee was underpaid in addition to
20 an amount sufficient to recover underpaid wages;

21 (3) Wages recovered pursuant to this section shall be paid to the affected employee.

22 44. Plaintiff is informed and believes, and based thereon allege, that Defendants, and
23 each of them, violated, or caused to be violated, the Labor Code sections described herein, including
24 causing Plaintiffs and other Aggrieved Employees not to: be paid with the rates of pay and overtime
25 rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the
26 regular payday designated by Employer, the name of the employer, including any "doing business
27 as" names used, the name, address and telephone number of the workers' compensation insurance
28 carrier, information regarding paid sick leave, and other pertinent information.

45. As a direct and proximate result of the herein-described Labor Code violations, pursuant to Labor Code section 558, Plaintiffs and other Aggrieved Employees are entitled to recover civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

Violation of Labor Code § 1174.5

46. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required every person employing labor in California to “[a]llow any member of the commission or the employees of the Division of Labor Standards Enforcement free access to the place of business or employment of the person to secure any information or make any investigation that they are authorized by this chapter to ascertain or make. The commission may inspect or make excerpts, relating to the employment of employees, from the books, reports, contracts, payrolls, documents, or papers of the person.”

47. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required every person employing labor in California to “[k]eep a record showing the names and addresses of all employees employed and the ages of all minors.”

/ / /

48. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required every person employing labor in California to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

49. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate

1 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
2 member of the commission or employees of the division to inspect records pursuant to subdivision
3 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).”

4 50. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
5 willfully failed keep adequate or accurate time records including wage statements and similar
6 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
7 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
8 under Labor Code section 1174.

9 51. As a direct and proximate result of the herein-described Labor Code violations,
10 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
11 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
12 hundred dollars (\$500) per violation per Aggrieved Employee.

13 Violation of Labor Code § 1197.1

14 52. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other
15 person acting either individually or as an officer, agent, or employee of another person, who pays
16 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or
17 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,
18 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to
19 Section 203 as follows:

20 (1) For any initial violation that is intentionally committed, one hundred dollars
21 (\$100) for each underpaid employee for each pay period for which the
22 employee is underpaid. This amount shall be in addition to an amount
23 sufficient to recover underpaid wages, liquidated damages pursuant to Section
24 1194.2, and any applicable penalties imposed pursuant to Section 203.

25 (2) For each subsequent violation for the same specific offense, two hundred fifty
26 dollars (\$250) for each underpaid employee for each pay period for which the
27 employee is underpaid regardless of whether the initial violation is
28 intentionally committed. This amount shall be in addition to an amount

1 sufficient to recover underpaid wages, liquidated damages pursuant to Section
2 1194.2, and any applicable penalties imposed pursuant to Section 203.

3 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to
4 Section 203, recovered pursuant to this section shall be paid to the affected
5 employee.”

6 53. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused
7 Plaintiffs and Aggrieved Employees not to be paid minimum wages as a result of Defendants,
8 without limitation, routinely failing to pay Plaintiffs or other Aggrieved Employees’ to pay
9 minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual
10 and liquidated damages.

11 54. As a direct and proximate result of the herein-described Labor Code violations,
12 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to
13 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one
14 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
15 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each
16 subsequent violation.

17 Civil Penalties Under Labor Code § 2699

18 55. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
19 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
20 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
21 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
22 action brought by an aggrieved employee on behalf of himself or herself and other current or former
23 employees pursuant to the procedures specified in Labor Code section 2699.3.

24 56. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor
25 Code except those for which a civil penalty is specifically provided, the established civil penalty for
26 a violation of those provisions is as follows: if, at the time of the alleged violation, the person
27 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
28 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved

1 employee per pay period for each subsequent violation.

2 57. Plaintiff is informed and believes and based thereon alleges that Defendants, and
3 each of them, violated the Labor Code sections described herein, including, without limitation, for
4 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or
5 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during
6 employment and after employment separation; provide employees the opportunity to inspect
7 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their
8 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual
9 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by
10 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and
11 freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of
12 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

13 58. Moreover, Plaintiff and other Aggrieved Employees within the State of California
14 whom they seek to represent are entitled to an award of reasonable attorneys' fees and costs in
15 connection with their herein-described claims for civil penalties.

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REQUESTS FOR JURY TRIAL

59. Plaintiff hereby requests a trial by jury on all causes of action contained herein.

PRAYER

WHEREFORE, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for judgment against Defendants as follows:

- A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699, and 2802, and all other applicable sections listed *infra*;
- B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699, 2802, and all other applicable sections listed *infra*;
- C. Pre-judgment and post-judgment interest;
- D. For costs of suit incurred herein; and
- E. Such other and further relief as the Court deems just and proper.

Dated: February 7, 2023

BIBIYAN LAW GROUP, P.C.

BY: /s/ Alexander D. Wallin

DAVID D. BIBIYAN

JEFFREY D. KLEIN

ALEXANDER WALLIN

Attorneys for Plaintiff, CAYA RODRIGUEZ
as an aggrieved employee, and on behalf of all
other aggrieved employees under the Labor
Code Private Attorneys' General Act of 2004,

From: Sarah Cohen <sarah@tomorrowlaw.com>
Sent: Wednesday, July 19, 2023 5:35 PM
To: Brad Kane
Cc: Eric Clopper; David Bibiyan; Jeffrey Klein; Emanuel Munguia; Nadia Rodriguez;
thomavvxngrouppllcetalz11731883@projects.filevine.com
Subject: Re: Thoma v. VXN, et al. (PAGA)

Counsel,

Thank you for confirming NAR. We will prepare it with the service package soon.

As to removal/consolidation or a stay, we do not agree.

Thanks.

On Wed, Jul 19, 2023 at 5:30 PM Brad Kane <bkane@kanelaw.la> wrote:

Sarah,

My firm is authorized to accept service of the Summons and Complaint for the PAGA Action by way of NAR.

Please let me know if your client will stipulate to removal/consolidation with the federal action or a stay of the PAGA action pending resolution of the federal court putative class action.

Best,

Brad

Brad S. Kane

Kane Law Firm

1154 S. Crescent Hts. Blvd.

Los Angeles, CA 90035

Tel: (323) 697-9840

Fax: (323) 571-3579

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From: Sarah Cohen <sarah@tomorrowlaw.com>
Sent: Wednesday, July 19, 2023 2:20 PM
To: Eric Clopper <eclopper@kanelaw.la>; Brad Kane <bkane@kanelaw.la>
Cc: David Bibiyan <david@tomorrowlaw.com>; Jeffrey Klein <jeff@tomorrowlaw.com>; Emanuel Munguia <emanuel@tomorrowlaw.com>; Nadia Rodriguez <nadia@tomorrowlaw.com>; thomavvxngrouppllcetalz11731883@projects.filevine.com
Subject: Re: Thoma v. VXN, et al. (PAGA)

Eric and Brad,

Please confirm whether you are authorized to accept service of the Summons and Complaint for the PAGA Action by way of NAR.

Thank you.

--

Kind regards,

Sarah Cohen, Esq.

Associate Attorney

Bibiyan Law Group, P.C.

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555
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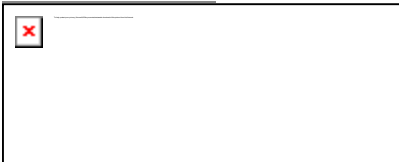


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Kind regards,

Sarah Cohen, Esq.
Associate Attorney

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